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SUBJECT: RRT ERBIL: ONE IRAQ: THE JUDICIARY CROSSES THE GREAT DIVIDE

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This is an Erbil Regional Reconstruction Team (RRT) cable.

¶1. (SBU) Summary: Chief Justice Medhat on August 29 led a delegation of nine judges from the Iraq High Judicial Council (HJC) to meet with thirteen judges from the Kurdistan Region of Iraq who were selected by the Kurdistan Judicial Council (KJC). This was the first meeting between representatives of the national judiciary and judges in the Kurdistan Region since the Kurdistan Region attained autonomy in 1991. The meeting was sponsored by a local NGO with funding from the International Republican Institute (IRI) and facilitated by the Rule of Law (ROL) coordinator at RRT Erbil.

¶2. (SBU) The forum covered communication between federal and regional justices; the current structure of the regional judiciary; harmonization between the federal judiciary and the regional judiciary; and coordination of prosecution, execution of judgments and the administration of justice at the federal and regional levels. A Memorandum of Understanding signed at the conclusion commits to continued dialogue on the subjects covered at the forum. More importantly, concrete results emerged shortly thereafter, with an indication that Judge Medhat was working to help include Kurdish Judges on the HJC. The Erbil RRT is encouraging our Kurdish colleagues to seize this opportunity. This meeting, and the follow-up it generates, represent important steps in consolidating a coherent and effective legal framework for all regions of Iraq. End Summary.

First Meeting of national and Kurdistan judges since 1991

¶3. (U) On August 29, 2008 Chief Justice Medhat led a delegation of nine judges from the Iraq High Judicial Council (HJC) to meet with thirteen judges from the Kurdistan Region of Iraq that were selected by the Kurdistan Judicial Council (KJC). This was the first meeting between representatives of the national judiciary and judges in the Kurdistan Region since the Kurdistan Region began autonomous government in 1991. The meeting was sponsored by a local NGO with funding from the International Republican Institute (IRI) and facilitated by the ROL adviser at Erbil RRT.

¶4. (U) The forum covered four topics: 1) communication between federal and regional justices; 2) the current structure of the regional judiciary; 3) harmonization between the federal judiciary and the regional judiciary; and 4) coordination of prosecution, execution of judgments and the administration of justice at the federal and regional levels.

MAIN DISCUSSION POINTS

¶5. (U) The judges discussed both electronic and courier-type communication between federal and regional justices. While several noted that electronic communication could be relatively secure, others resisted over-reliance on this because of the Iraqi legal system's dependence on seals and original signatures. This topic was noteworthy in that the goal of creating a secure line of communication was presumed in spite of the long separation. The two bodies agreed to dedicate personnel to work on this issue.

¶6. (SBU) On the current structure of the regional judiciary, Chief Justice Medhat informed the group that he had just attended a meeting in Switzerland to explore the nature of the judiciary in a federal Iraqi state. (Note: no specific information on this meeting was available to the Erbil RRTOffs). Unfortunately, the organizers of the event invited the regional Minister of Justice to the meeting

rather than the head of the regional judicial council. (Comment: Although in this case the meeting was reportedly very positive, international actors will need to exercise care in order to avoid inadvertently undermining the independence of the judiciary in the region.) The Chief Justice spoke at length about the importance of regions in the Iraqi Constitutions and the need to empower them, and called for a delineation of jurisdiction. The Chief Justice also cleared his visit to the forum with KRG President Barzani, however, which suggests that the independence of the regional judiciary remains politically sensitive and the linkage between regional and national courts will need political buy-in. To this end, the drafting of the regional constitution and revision of the national constitution merits close scrutiny vis a vis its impact on judicial independence.

¶7. (SBU) The longest discussion on a criminal law issue was on the execution of a Memorandum of Arrest issued by the national judiciary in the Kurdistan region. In sum, the judges agreed to additional discussions on the procedural issues related to the prosecution of criminal cases that spanned provincial and regional boundaries.

¶8. (SBU) Regional judges directed much discussion toward their concern over training and pay scales. Several noted that regional judges have not had access to international or national training and funding since 1991; while the reasons for this were not apparent, Medhat said the regional executive had sent several invitations to regional judges since 2003. Ultimately, the regional judges requested assistance from the HJC in harmonizing regional and national pay scales. (Note: pay scales for national judges are several times those of regional judges in similar positions. On the other hand, regional judges generally enjoy better security and working conditions.) Medhat expressed empathy and noted that some regional judges had requested re-assignment to the national system

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for the superior pay, but stressed that pay and security are currently concerns for the regional government. Participants also commented that administrative strengthening programs at the HJC in Baghdad may become available to the KJC.

#### UNITY WITHIN AN INDEPENDENT JUDICIARY

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¶9. (SBU) Several judges worried that political and security pressure in both Baghdad and Erbil could threaten judicial independence. Medhat repeatedly called for unity within an independent judiciary. He elaborated on the unique nature of regions within the cultural and constitutional context of Iraq, and said that "all regions" should have regional judicial councils that ultimately harmonize under the HJC. The Chief Justice outlined a potential Iraqi justice system that includes several regional councils linked under the HJC.

#### MEMORANDUM OF UNDERSTANDING AND FOLLOW-UP

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¶10. (U) A short Memorandum of Understanding between the HJC and the KJC commits to continued dialogue on the subjects of the forum. The forum's closing comments included specific assurances that the national judiciary would include regional judges in professional development opportunities and institutions, specifically mentioning the planned Judicial Education and Development Institute.

#### BACKGROUND AND COMMENT

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¶11. (SBU) Comment: According to writings by Chief Justice Medhat, the Baathist regime began undermining the independence of the judiciary starting in the late 1950s. Because the judiciary was difficult to control, the Baathists sidelined the courts and pushed investigative functions towards the police. At the same time, the selection and training of new judges came under the executive in order to apply policy direction to new judges. Prior to 1991, the bulk of the area now referred to as the Kurdistan Region was judicially administered as an appellate district. After gaining autonomy, the Kurdistan Region in 1992 modeled its judicial structure on that of the GOI at the time, with the judiciary managed by the regional Minister of Justice. The regional minister initially was an experienced judge and the structure retained a high degree of respect, but over time, party influence and isolation from professional training and external accountability took their toll. Several judges at the forum noted that the regional judiciary is still struggling with these issues even though the Kurdistan

National Assembly passed the Judicial Powers Law (JPL) in November 2007. The JPL created an independent judicial council in the Kurdistan Region similar to the national HJC.

¶112. (SBU) Comment Cont'd: The judges' perceived inability to exert constitutional and legislative power through the formal judicial system is a fundamental challenge for Rule of Law programming nationally, since most maturity models measure the extent to which disputes are resolved through the courts. Judges from the HJC and KJC agreed to improved coordination, but progress may be slow without international support. Absent such help, Iraq's political leadership is likely to resist a judicial system that can directly deliberate on sensitive topics such as party involvement in governance, binding interpretations of the constitutional, and disputes between different levels of government. END COMMENT